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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	76293326
Applicant	Prema Jyothi Light
Applied for Mark	SHIMMERING BALLERINAS & DANCERS
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Submission	RESPONSE TO EXAMINER'S STATEMENT
Attachments	SHIMMERING BALLERINAS, 76293326, RESPONSE TO EXAMINER'S STATEMENT.pdf ( 3 pages )(113229 bytes )
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Date	02/05/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE**

**TRADEMARK TRIAL AND APPEAL BOARD (TTAB)**

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NAME OF APPLICANT:                      Prema Jyothi Light

NAME OF TRADEMARK:                      SHIMMERING BALLERINAS & DANCERS

SERIAL NUMBER:                              76293326

EXAMINING ATTORNEY:                      Paul F. Gast, Esq.

DATE:    February 3, 2008

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**RESPONSE TO EXAMINER'S STATEMENT**

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1.      This Trademark is a single mark, with a uniform commercial impression. It has a primary element and secondary elements, but it is not "multiple marks". The secondary elements are design elements, as well as creative components of the Trademark. None of the secondary components are generic ingredients.
2.      A permissible Substitute Drawing was offered, in response to the Examining Attorney's objections. This is a version of the Trademark which is also in use. This Substitute Drawing is not a material alteration of the Trademark. It contains the same primary element and secondary elements in a little different arrangement. This shows how the secondary elements are artistic elements of the Trademark.
3.      The Substitute Drawing meets all requirements for a permissible Substitute Drawing.
4.      Both versions of the Trademark – the Original Drawing and the Substitute Drawing, meet all requirements for a registrable Trademark. The TTAB may approve of either version, at its discretion.
5.      The Original Drawing is columnar, in a flag-like design. The Substitute Drawing is radial, more like a flower or sun. In both versions, the secondary elements contribute towards the design of each version of the Trademark.

6. This may be clearer in the color versions of the Trademark, which the Petitioner sincerely wished to bring before the TTAB. However, she is on crutches with painfully injured feet and could not lift heavy boxes. As her finances, were strained by expenses from her serious injuries, she was not able to hire anyone, timely, to assist her.
7. The color exhibits which the Petitioner wished to place before the TTAB were sent in to the PTO timely, earlier, but were somehow mislaid or lost within the PTO due to mishandling within the PTO. These are exhibits which would already be before the TTAB if it were not for the mishandling of the paperwork within the PTO, which is not the Petitioner's fault. No explanation has ever been offered for the mishandling or loss of these exhibits within the PTO. It definitely should be permissible to send in a second set.
8. However, even the black-and-white versions of the Trademark convey unique impressions. The black-and-white drawings were originally submitted because they would be easier to publish after registration, and because the soft blend of airbrushed colors would be difficult to convey in black-and-white, as then required.
9. If the TTAB does not accept the second version of the Trademark as an acceptable and permissible Substitute Drawing, then the Original Version of the Trademark, in its flag-like design, should be acceptable for registration. It meets all requirements for registration.
10. This Trademark contains all elements together. All elements are related to the strong primary elements, which are the words SHIMMERING BALLERINAS & DANCERS, in calligraphy. The fine print words are not presented as separate Marks.
11. The secondary elements are not "surplus subordinate listings". They help convey the uniform commercial impression of this single and distinctive Trademark.
12. The Petitioner's APPEAL BRIEF was only 25 pages long. It did not exceed 25 pages. Therefore, no previous permission was necessary from the TTAB for this APPEAL BRIEF, with regard to length. The BRIEF, at 25 pages, was exactly in conformance with the length requirement. Petitioner was assured by telephone representatives of the TTAB that the BRIEF itself was limited to 25 pages, but that any exhibits in support of the BRIEF could be in addition to that.
13. The Examining Attorney objects that in the Original Drawing, the secondary elements appear as columns, not stripes. However, a column is just a vertical stripe. The vertical stripes are more clearly apparent as design elements in the full-color version. In many flags, there are vertical stripes. There is no law which the Petitioner is aware of, which limits designers to designing with horizontal stripes, rather than vertical stripes.
14. The color version of the Trademark, in its columnar flag-like version, has softly airbrushed, multi-color, vertical stripes. It is clearly flag-like. Yet the Trademark should

be registrable as black-and-white too. It is in use, both as a color Trademark, and a black-and-white Trademark.

15. This is a valid, unique and creative Trademark, distinctively in use, not a “laundry list”.
16. Do look at the Substitute Drawing. It is a creative arrangement of secondary elements which contribute to the design of the Trademark. A flower has many petals. Yet, one does not complain that a peony has petals, and that only the central nub of any flower should ever be shown in any flower design. As a flower has petals, this version of the Trademark has secondary elements.
17. Where would a wheel be without its spokes? It is valid to have spokes on a wheel. They are essential. And similarly, it is valid for this Trademark to have its secondary elements.
18. This is also true of the Original Drawing. Where would the Parthenon be without its columns? Should only a ceiling or floor be allowed? The columns in between stand for something!
19. Should Old Glory be limited to just its stars, stripped of its stripes? Both contribute to the overall design of the flag. It makes no difference whether the stripes are vertical or horizontal.
20. The Examining Attorney just simply does not like the designs for this Trademark. He is entitled to his personal preferences and opinions, of course. But a Trademark should not be denied registration, based upon the personal design preferences of an Examining Attorney.
21. The designs for this Trademark, whether the Original Drawing or the permissible Substitute Drawing, are valid designs. They meet all requirements for registrable Trademarks. They neatly fit into the size requirements, at the time of their submission for registration. Just because the Trademark is unusual does not mean that it should be denied registration.
22. And, registration of this Trademark would contribute to truth and justice, honesty in creative work, and the prevailing of right over wrongdoing in creative work in America.

Petitioner respectfully requests that this distinctive Trademark be granted registration. Something beautiful and valid would be thrown out unnecessarily, if registration is denied.

Most respectfully and sincerely submitted,

A handwritten signature in cursive script, reading "Prema Jyothi Light". The signature is written in dark ink on a light background.

Prema Jyothi Light